

***DRAFT 8/30/11 – SUBJECT TO CHANGE***  
***For Review and Adoption by DSC at September 22-23, 2011 Meeting***  
**DELTA STEWARDSHIP COUNCIL**  
**August 26, 2011**  
**Holiday Inn Capitol Plaza**  
**300 J Street, Sacramento, California**

**MEETING SUMMARY**

Note: Copies of all Council meeting agendas and links for all documents can be found at the DSC website, [www.deltacouncil.ca.gov](http://www.deltacouncil.ca.gov). Specific links are provided in the meeting summary for those items submitted at the meeting.

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***Friday, August 26, 2011, 9:00 a.m. – 5:00 p.m.***

**1. Welcome and Introductions**

The meeting was called to order at 9:00 a.m., August 26, 2011, by Chair Phillip Isenberg.

**2. Roll Call – Establish a Quorum (Water Code §85210.5)**

Roll call was taken and a quorum was established with all members present (Hank Nordhoff, Patrick Johnston, Randy Fiorini, Gloria Gray, Felicia Marcus, Phillip Isenberg, and Don Nottoli).

**3. Chair's Report**

Chair Isenberg opened by briefing the Council on water issues recently discussed by Governor Brown. Chair Isenberg stated he expected an increased level of attention paid to water issues once the legislative session is over.

**4. Executive Officer's Report**

**a. Legislative and Legal Update**

The Legislative Update was presented by Curt Miller. He discussed AB 576 that would require the Council to develop a finance plan by January 1, 2013, to pay for the costs of implementing the Delta Plan, and SB 34 (Simitian) that would enact the California Water Resources Investment Act of 2011 to finance a water resources investment program. Mr. Miller stated both bills were among those that will be taken up in 2012. Miller also stated the Council will watch with interest AB 157 (Jefferies), which proposed to reduce the size of the water bond by 25%, currently set for voter action in 2012. The list of legislation of interest to the Council was included in the meeting materials.

The Legal Update was given by Chris Stevens – he said there were no updates on the cases that the Council was tracking. Mr. Stevens announced the Council had a new legal extern, Kurtis Keller, a third year law student at UC Davis. Mr. Keller will be presenting the legal updates in the future.

## **5. Adoption of the July 29, 2011 Meeting Summary (Action Item)**

Chair Isenberg asked if there were any questions or comments from the Council, or members of the public, on the July 29, 2011 Meeting Summary – there were none.

It was moved (Johnston) and seconded (Fiorini) to approve the meeting summary for the July 29, 2011 meeting. A vote was taken (5/0: Nordhoff, Johnston, Fiorini, Isenberg, and Nottoli) and the motion to approve the meeting summary was adopted. Members Gray and Marcus abstained from the vote because they were absent during the July 29<sup>th</sup> meeting.

## **6. Lead Scientist's Report**

The Lead Scientist Report was presented by Dr. Lauren Hastings. Dr. Hastings informed the Council of changes in the Lead Scientist's schedule. After three years as the Lead Scientist, Dr. Cliff Dahm resumed his duties as a full-time professor at the University of New Mexico. His last day was August 19, but Dr. Dahm will continue to support the Council's science efforts four days a month during the recruitment for a new lead scientist and transition period. Dr. Hastings announced that the candidate for the lead scientist position, Dr. Peter Goodwin, was presenting a brown bag seminar - details of the seminar are posted on the Council's website at <http://bit.ly/qi7zSJ>. Dr. Hastings discussed the independent scientific review of the BDCP Effects Analysis chapter and associated appendices that was requested by the BDCP planning agencies and participants. Dr. Hastings described the two-phase review. The first phase would begin in September and the second phase would occur in March or April of 2012. Dr. Hastings introduced the proposal for a new class of Delta Science fellows. Dr. Hastings reported that the proposal was being prepared in coordination with the California Sea Grant with the major subject areas of the Delta Plan as the focused research topic areas. The proposal will be brought before the Council at the September meeting. Information on the State of the San Francisco Estuary Conference, that will be held on September 20-21, 2011 in Oakland, CA, was also provided to the Council members.

## **7. IEP Lead Scientist's Report**

Dr. Anke Mueller-Solger presented the IEP Lead Scientist's Report. Dr. Mueller-Solger updated the Council of three new IEP work teams focused on new studies related to restoration activities in the Yolo Bypass, migratory fish telemetry research and monitoring in the Central Valley, and salmon and steelhead genetic research and monitoring in the Central Valley.

Dr. Mueller-Solger briefed the Council on three upcoming conferences that the IEP scientists help organize; the American Fisheries Society 141<sup>st</sup> Annual meeting; a special symposium at the Society's annual meeting entitled "San Francisco Estuary: A Dynamic Confluence of Fisheries, Policy and Resource Management;" and the 10<sup>th</sup> biennial State of the San Francisco Estuary Conference. Following the briefing on the conferences, Dr. Mueller-Solger briefed the Council on the Draft Plan for "Adaptive Management of Fall Outflow for Delta Smelt Protection and Water Supply Reliability." Dr. Mueller-Solger stated the revised Draft Plan will be used as the basis for scientific studies beginning in September. The report is posted on the Bureau of Reclamation's website at <http://on.doi.gov/p7fTs2>.

## **Public Comment on Agenda Item 7:**

Greg Zlotnick, State and Federal Contractors Water Agency, stated he wanted to clarify the full impact of the Fall Outflow study for the record. While the Bureau's study showed the water

supply impact to the federal contractors was unlikely, he felt it was important to understand there could be as much as a 600,000 to 800,000 acre feet loss to the State contractors with the "Fall Outflow Action". The impact would occur in October because of a Federal Energy Regulation Commission (FERC) regulation pertaining to Oroville Dam.

#### **8. Briefing and Discussion on California State Parks' Recreation Proposal for the Sacramento-San Joaquin Delta and Suisun Marsh**

Dan Ray, Chief of the Planning Division for the Department of Parks and Recreation presented Agenda Item 8. Mr. Ray provided the Council with copies of the State Parks' Recreation Proposal for the Sacramento-San Joaquin Delta and Suisun Marsh and a PowerPoint that highlighted the proposal and the history of recreation in the Delta. The proposal provides recommendations for expanding state recreation areas in the Delta and Suisun Marsh. The Proposal provides suggestions that would contribute to sustaining the Delta and Suisun Marsh as a place for recreation as well as contributing to the development of the region's recreation and tourism economy. Mr. Ray stated that the proposal would also be presented to the DPC for consideration in completing its Economic Sustainability Plan and offered specific recommendations for the Council's consideration for inclusion in the Delta Plan. The link for the map that was handed out at the meeting on the California State Parks' Recreation Proposal for the Sacramento-San Joaquin Delta and Suisun Marsh is [http://www.parks.ca.gov/pages/795/images/deltarec\\_map\\_18x24.jpg](http://www.parks.ca.gov/pages/795/images/deltarec_map_18x24.jpg)

**Public Comment on Agenda Item 8:** None.

#### **9. Briefing and Discussion on the Office of Administrative Law (OAL) Regulation Process**

Chris Stevens briefed the Council on the history of the OAL and the process that must be complied with in order to turn the Delta Plan policies into state regulations. Mr. Stevens explained that the state rulemaking process (specified in the Administrative Procedures Act) was meant to involve the public in the making of state regulations. He explained that the OAL was the centralized agency for access to state regulations in effect, and an institute to help guarantee the right to review and comment on proposed regulations. Mr. Stevens gave a definition of a regulation and stated the rulemaking package will be a compilation of draft policies that will have regulatory effect, from the 6<sup>th</sup> staff draft Delta Plan. It is anticipated a preliminary draft of the rulemaking package will be presented to the Council in September for their review.

#### **10. Staff Briefing on Fifth Staff Draft of the Delta Plan**

Joe Grindstaff began the discussion by briefing the Council on the release schedule of the Delta Plan. He stated the Fifth Staff Draft of the Delta Plan had been released on August 2, and comments were being accepted through September 30<sup>th</sup>. It had been anticipated that the draft EIR would be released on September 1, however, because of complex issues that were still being worked through, the September 1 deadline was not going to be met. Mr. Grindstaff said the Plan had improved since the last draft with most changes focused on improving the text and readability of the document. He stated a few recommendations were added and clarifying language was added for a few of the proposed regulations. Graphics and sidebars were added throughout the plan. Mr. Grindstaff stated the Fifth Staff Draft is being used as the "proposed project" for the EIR process and once the draft EIR is issued, a 45-day comment period will begin. It is anticipated that a public workshop on the draft EIR will be held during the comment period, as well as a public hearing to receive oral comments.

The Fifth Staff Draft, its accompanying Appendices, and a Redline Version of the Policies and Recommendations are posted on the Council website at <http://www.deltacouncil.ca.gov/delta-plan>. Although the Staff Draft was discussed by the Council, the members did not do an in-depth review of the document.

As requested by the Council, focused work sessions on Covered Actions and Governance, the Delta Plan Vision and Performance Measures, Economic Sustainability Plan and Delta as a Place, and the Finance Plan, have been scheduled. Agendas for the work sessions are posted on the Council's website at <http://www.deltacouncil.ca.gov/events-calendar>. The work sessions will take place at the DSC offices in Sacramento (980 9<sup>th</sup> Street, 2<sup>nd</sup> floor Conference Rooms) and are scheduled as follows:

September 15, 2011, 9 a.m. – 12 p.m., Fifth Staff Draft Delta Plan: Success and Performance Measures

September 15, 2011, 1 p.m. – 4 p.m., Covered Actions and Governance

September 19, 2011, 9 a.m. – 12 p.m., Economic Sustainability Plan and Delta as an Evolving Place

September 20, 2011, 9 a.m. – 12 p.m., Finance Plan

The Council briefly discussed the DPC's Economic Sustainability Plan and its schedule. The Delta Protection Commission will be holding four public meetings to discuss and receive input on its August 9 draft and will be considering the Plan for adoption at its September meeting. The Plan is required by law to be consistent with the Delta Plan and the coequal goals and will come to the Council for consideration in late September or October.

Member Fiorini stated he believed the Water Board's policy on flow requirements was unclear and he requested an explanation on the Board's process for determining water quality flow objectives for the Delta. He asked if there is a different process for determining water quality flow requirements for each tributary, and if there was a separate process for determining Delta flows in contrast to determining tributary flows. Mr. Fiorini felt it was important to understand the process and requested a brief explanation of the two processes. Mr. Grindstaff and Chris Stevens provided clarification of the process and the Board's requirements under the law – balancing the needs of all the people in coming up with the flow standards. Mr. Stevens suggested inviting the State Board back to make a presentation to the Council on the development of the two standards.

#### **Public Comment on Agenda Item 10:**

John Kingsbury, Mountain Counties Water Resources Association, highlighted the Association's concerns that include clarification of covered actions and a definition of "feasible" regarding water rights and the area of origin and the public goods charge. Mr. Kingsbury stated the Association was opposed to a statewide public goods charge and agreed with the beneficiary pays concept. Mr. Kingsbury commented on flow objectives and asked if the flow regime aimed at improving the Delta might create another crisis. He felt that although the draft had improved, it was still filled with uncertainty and overreaching regulatory authority and oversight. He acknowledged the difficult task of preparing the plan and urged the Council to take the time to create a fair, equitable and implementable plan. As a member of the Ag/Urban Coalition, Kingsbury encouraged the Council to consider the Ag/Urban Alternate Plan.

Joone Lopez, Calaveras County Water District, stated she was encouraged by the work sessions that were being scheduled. Ms. Lopez stated that their county is rich in water that is not all currently being used, but that its Urban Water Management Plan had plans to expand their water use in the future. Ms. Lopez stated the County is in dire need for responsible development and water was critical to that development. Ms. Lopez stated the District cannot support the Fifth Staff Draft in its current form, because to Calaveras County it means higher water rates, less water availability and ultimately their economy would be destroyed. Key elements that were of concern to Ms. Lopez included: water rights (application of permits); overemphasis of flow (flow requirements that affects the area of origin); a lack of clarity on covered actions, including a definition feasible; and financing.

Pete Kampo, Tuolumne Utilities District, stated they joined the Ag/Urban process and strongly supported the recommendations in the Ag/Urban Alternate Plan and encouraged the Council to consider the Ag/Urban Plan in the development of the EIR. Mr. Kampo wanted to amplify the level of effort that went into the development of the Ag/Urban Plan and felt that there had been agreement in some very sensitive issues that have not been agreed upon before.

The Council recessed for lunch at 12:05 and resumed the meeting at 1:00 p.m.

## **11. Finance Matrix Discussion**

Agenda Item 11 was presented by Curt Miller and Eric Nichol. The discussion focused on how to fund implementation of the Delta Plan. Given a conceptual amount of funding, the focus is on the near term and prioritizing the projects and programs that would achieve the greatest early successes. Mr. Miller walked the Council through the CALFED Bay-Delta Program Cross Cut Budget Supplemental Report Display (required by federal law) and the draft five-year budgets for Delta Agencies, taking comments and providing clarification on each.

Following the discussion on the budgets, Eric Nichol walked the Council through a spreadsheet that provided information on immediate actions needed for achieving the coequal goals. Mr. Nichol outlined the first stage actions for the Delta Plan implementation, actions needed to lead short term successes towards achieving the coequal goals, actions intended to produce useful outcomes while other plans and efforts are still in the development phase, and actions not limited to State funding. He took comments from the Council and provided clarification.

The issue of Area of Origin and water rights came up during the discussion of Agenda Item 11. It had come up at the July 29<sup>th</sup> meeting and Chair Isenberg had made the suggestion the Council revisit the background material from the Attorney General's Office and others regarding Area of Origin, the Delta Protection Act, unquantified water rights and how to address the question of how riparian water rights applied to unquantified water rights. Staff will make arrangements for the briefing to occur at a future meeting.

## **Public Comment on Agenda Item 11:**

Jennifer West, California Municipal Utilities Association, gave her initial feedback on concerns with the finance section of the plan about making a recommendation to the legislature to establish a public goods charge for water. Ms. West was concerned with the lack of detail in the recommendation and was concerned that it would require the urban and agriculture water users to pay the public goods charge to fund DWR updates and/or science programs. Ms. West stated they are concerned about funds being available on the local level and requested more thought be put into the recommendation before adding it into the plan.

Doug Wallace, East Bay Municipal Utilities District, commented on finance and reduced reliance on the Delta. Mr. Wallace felt the public goods charge could not be precisely applied to water agencies as is the electricity sector. He urged clarity on the public goods charge and stated the public benefits charge should be narrowly defined. Mr. Wallace stated that to water agencies the public goods charge sounds like a defacto tax.

Kurt Ohlinger, Sacramento Regional County Sanitation District, commented on Sacramento Regional water marketing and stated it is very expensive to reclaim water but the District does it because they believe it is the right thing to do. Mr. Ohlinger provided a brief description of how SRCSD uses reclaimed water and stated they would like to expand their customer base in order to use the reclaimed water.

Brett Baker, Restore the Delta and Environmental Water Caucus, stated as a public trust body the Council has the responsibility to account for the public trust and the allocation of water resources. In future drafts of the plan, the EWC would like to see a definition of five terms, in particular: what from the Council's perspective constitutes a more reliable water supply; what constitutes protecting, restoring and enhancing the Delta ecosystem; enhancement of the Delta as a evolving place; and regional self reliance. In addition, Mr. Baker also would like to know what reduced reliance on the Delta means to the Council. Mr. Baker suggested that the Council identify quantifiable goals and objectives for the plan and commented on BDCP and urged the Council to take into account the economic value of ecosystem services in the Delta.

On behalf of Restore the Delta, Mr. Baker commented on maintaining the habitat in the Delta; the critical nature of the levees and funding for levee maintenance; to take serious examination of dredging; and seismic stability and costs to the public. Regarding a public benefits charge for maintaining the levees, Mr. Baker felt he would like to see the beneficiaries broadened.

Rogene Reynolds, requested clarification on number 5 of the notes on the Immediate Actions matrix. Ms. Reynolds believed that the dollar amount for the value of the land reflected in the matrix fell short and a realistic dollar value on the land was needed. She also questioned if it meant the lands no longer belonged to the local agencies for a tax base and they would no longer generate tax dollars.

## **12. Public Comment**

Chair Isenberg asked if there were any members of the public wishing to address the Council on any matter. There were none.

## **13. Preparation for Next Council Meeting – Discuss (a) expected agenda items; (b) new work assignments for staff; (c) requests of other agencies; (d) other requests from Council members; and (e) confirm next meeting date – September 22-23, 2011, at the West Sacramento City Hall Galleria.**

**The meeting was adjourned at 3:07 p.m.**